



Balancing Double Jeopardy and Fair Trial: Upholding Human Rights in Indonesia's Legal System

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Abstract

*This article explores the conflict between the principle of double jeopardy and the fair trial right, with a focus on Indonesia's legal system. The fair trial principle, a cornerstone of international human rights law, guarantees individuals the right to a just and impartial legal process. However, Indonesia's Law No. 7/2017 and Government Regulations No. 11/2017 introduce provisions that seem to undermine this principle, particularly through the application of double jeopardy. This research employs normative or doctrinal legal methods, using a literature review to examine relevant theories, principles, and legal norms. The study concludes in three key findings: First, the fair trial principle, which includes elements like the *ne bis in idem* and *una via* principles, is a binding component of international human rights law that must be adhered to by state parties, including Indonesia. Second, the provisions on double jeopardy in Indonesian law, particularly within Law No. 7/2017 and Government Regulations No. 11/2017, violate human rights by compromising human dignity and not providing true justice. Third, to ensure the protection of the fair trial principle, Indonesia should abolish the double jeopardy provisions in these laws, adopting a "one punishment for one act" approach, where further penalties should serve as guidance rather than retribution. This research contributes to the ongoing discourse on the intersection of human rights, legal reform, and justice in Indonesia, advocating for necessary legal changes to better protect individuals' rights in the criminal justice system.*

Keywords: Fair Trial; Double Jeopardy; Indonesian Legislation

I. Introduction

Law is an instrument to provide justice at the level of legislation, court, and society.¹ In theory and practice, the law governs various aspects, such as crime, private property, the

¹ Lela Brilmayer and Charles Seidell, "Jurisdictional Realism: Where Modern Theories of Choice of Law Went Wrong, and What Can Be Done to Fix Them", *The University of Chicago Law Review* 86, no. 8 (December, 2019): 2031-2100, <https://www.jstor.org/stable/26808968>.

constitution, administration, human rights, economics, and the environment.² The development of law is constantly experiencing dynamics, specifically to produce justice for humankind.³ The debate over justice is never complete. The term justice is interpreted differently, depending on the legal paradigm.⁴ For instance, a justice in legal positivism defines law as a product issued by state authority and written down. On the other hand, pragmatic legal realism implies that law is dynamic and may Ficklely conform to the values and needs of the community.⁵ Accordingly, justice criteria are dissimilar wherever municipal law is concerned. Certainly, non-uniformity leads to uncertainty in the application of the law, yet it all relies on the legal system in each municipal law.⁶

Nowadays, the application of justice eternally refers to the legislation in certain countries, due to the legislation completely measuring the genealogy of a norm, divergent with judicial decisions as reflect a complex one of judge's ideology in each decision.⁷ Another rationale is that the legislation in each country should generally point to the constitution; hence, the unfair legislation that is contrary to the constitution can be amended, although in practice, it takes a long period and has to go through a tricky one of political processes.⁸ Apart from an involution in political processes, assessing justice in legislation remains relevant for the future of law (*ius constituendum*). Moreover, justice should be realized despite the complexity of political dynamics.⁹

Presumably, there are many countries whose aspects of justice can be inquired about. Nevertheless, this work chooses to inquire about justice in Indonesia. The most important premise behind this is the inconsistency of Indonesian legislation with constitutional values, particularly in human rights. The fact can be proven by many legislations in Indonesia that enact multiple sanctions, or in legal science, it is called "Double Jeopardy," especially in criminal law and administrative law.¹⁰ An example can be observed in Law Number 7 of 2017 on General Elections (Law No. 7/2017) and Government Regulations Number 11 of 2017 on Civil Servant Management (Government Regulations No. 11/2017), briefly, the two legislations contain double jeopardy, the first can be seen in the articles regarding the dismissal of political candidacy and the dismissal of election organizer, the latter can be inspected in the articles relating to the dismissal of civil servant.

The Indonesian constitution (UUD NRI 1945) has arranged human rights, particularly the right to justice, in Article 28D, yet double jeopardy in Law No. 7/2017 and Government Regulations No. 11/2017 does not reflect human rights values. Wherefore, the discourse of justice in the context of human rights is extremely tight related to the principle of "fair trial" which is stated in Article 5 Universal Declaration of Human Rights (UDHR) which sounds "No one shall

² Martin Burgi, "Public Administration and Law", In "European Perspectives for Public Administration: The Way Forward", edited by Geert Bouckaert and Werner Jann, 147-62. (Leuven University Press, 2020).

³ Andrea Giampetro-Meyer and Nancy Kubasek, "Harvey: Environmental Justice and Law", *Fordham Environmental Law Review* 31, no. 1 (2020): 37-59, <https://www.jstor.org/stable/26954624>.

⁴ Klara Helene Stumpf, Christian U. Becker, and Stefan Baumgärtner, "A Conceptual Structure of Justice - Providing a Tool to Analyse Conceptions of Justice", *Ethical Theory and Moral Practice* 19, no. 5 (2016): 1187-1202, <http://www.jstor.org/stable/44955465>.

⁵ Brian Leiter, "Legal Realism and Legal Positivism Reconsidered", *Ethics* 111, no. 2 (2001): 278-301, <https://doi.org/10.1086/233474>.

⁶ Martijn Boot, "The Aim of a Theory of Justice", *Ethical Theory and Moral Practice* 15, no. 1 (2012): 7-21, <http://www.jstor.org/stable/41474503>.

⁷ Gunnar Folke Schuppert and Rhodes Barrett, "The Institutionalization Functions of Law: The Language of Law as the Language of Order and Conflict Resolution", In *A Global History of Ideas in the Language of Law*, 16:95-102, (Max Planck Institute for Legal History and Legal Theory, 2021).

⁸ Gunnar Folke Schuppert and Rhodes Barrett, "Constitution", In *A Global History of Ideas in the Language of Law*, 16:246-57, (Max Planck Institute for Legal History and Legal Theory, 2021).

⁹ Anne M. Cohler, "Legislation", In *Montesquieu's Comparative Politics and the Spirit of American Constitutionalism*, 120-47, (University Press of Kansas, 2021).

¹⁰ Louise Jordaan, "Appeal by the Prosecution and the Right of the Accused to Be Protected against Double Jeopardy: A Comparative Perspective". *The Comparative and International Law Journal of Southern Africa* 32, no. 1 (1999): 1-27, <http://www.jstor.org/stable/23251065>.

be subjected to torture or to cruel, inhuman or degrading treatment or punishment".¹¹ Furthermore, justice is also firmly related to the principle of *ne bis in idem* and *una via*, which supposed an act to be tried once; the initial one ordinarily applies in penal law, and the latter habitually serves in administrative law.¹² Nonetheless, over and over, double jeopardy is generally assumed to be contrary to these two principles.

Conflict among double jeopardy and several of the above principles encourage the emergence of this article to present justice in Indonesia by applying the principle of fair trial, which is part of the principles of human rights.¹³ This topic once before discussed by several legal scientists, Zia Akhtar in his article entitled "Double Jeopardy, Autrefois Acquit and the Legal Ethics of the Rules Against Unreasonably Splitting Case" which was published in *Criminal Justice Ethics*, Vol. 43, No. 3, 2024, the discussion revolves around the application of double jeopardy for autrefois in English courts which posit on modern analysis of DNA in adducing evidence and express that double jeopardy goes against legal ethics and undermined the fair trial process.¹⁴ Moreover, the discussion of double jeopardy as well as discussed by Ebenezer Kojo Gyesei Mensah in his article on the topic "Ghanaian Criminal Jurisprudence: the Rule of Double Jeopardy" which was published in *Social Science Research Network (SSRN)* in 2024, the discussion concentrates on the application of double jeopardy in Ghanaian courts which legitimized by constitution and legislation, the implementation of double jeopardy also importantly to protect individual rights specifically from oppression and harassment.¹⁵

The two articles above may highly link to this article, particularly in the literature review, which discussed the history, theory, and application of double jeopardy. However, this article has a distinctive attitude and research object from the two articles above, where this article has a confronting stance towards double jeopardy and renders Indonesian legislation as a research object.

II. Research Problems

An examination of double jeopardy in Indonesia needs to be conducted to produce a fair trial. Forasmuch as double jeopardy in Indonesia contains two main problems as follows. First, double jeopardy has separated Indonesian legislation from justice as it is not oriented towards human dignity remedies, yet it sentences individuals repeatedly. Second, double jeopardy is completely against the principle of human rights, notably the right to a fair trial. Meanwhile, the Indonesian constitution modulates the right to justice in Article 28, which means that applying double jeopardy is tantamount to betraying the constitution. Consequently, the doctrine of double jeopardy must be abolished from Indonesian legislation, particularly in Law No. 7/2017 and Government Regulations No. 11/2017, to appropriate the principle of human rights in the context of a fair trial.

III. Research Methods

The research method that will be used in this article is normative legal research or doctrinal legal research; in other words, this article intends to use a literature review. This article shall utilize several theories, principles, and legal norms to examine the research object.¹⁶ Hereinafter, this article will discuss the research results qualitatively in the form of narrative and descriptive.

¹¹ Carlos J. Ayala, "Universal Declaration of Human Rights, Article 5", *Poetry* 217, no. 3 (2020): 282, <https://www.jstor.org/stable/27202814>.

¹² Mark Ellis, "The Right to Fair Trials Under International Law", *Proceedings of the Annual Meeting (American Society of International Law)* 111 (2017): 79–88, <https://www.jstor.org/stable/2668018>.

¹³ Celia Brown-Blake, "Fair Trial, Language and the Right to Interpretation", *International Journal on Minority and Group Rights* 13, no. 4 (2006): 391–412, <http://www.jstor.org/stable/24675356>.

¹⁴ Zia Akhtar, "Double Jeopardy, Autrefois Acquit and the Legal Ethics of the Rule Against Unreasonably Splitting a Case", *Criminal Justice Ethics* 43 no. 1 (2024): 103–21, doi:10.1080/0731129X.2024.2325795.

¹⁵ Ebenezer Kojo Gyesei Mensah, *Ghanaian Criminal Jurisprudence: The Rule of Double Jeopardy* (April 6, 2024), Available at SSRN: <http://dx.doi.org/10.2139/ssrn.4786645>.

¹⁶ S.N. Jain, "Doctrinal and Non-Doctrinal Legal Research", *Journal of the Indian Law Institute* 17, no. 4 (1975): 516–36, <http://www.jstor.org/stable/43953840>.

Means that the discussion explains the relevance and conflict among the research object and certain doctrines and leads to attitudes and recommendations.¹⁷ Seeing that this research is doctrinal, the validity of the research can be observed in the relevance of doctrine and object.¹⁸ The doctrine that will be used to explain and analyze the research object is human rights theory, justice theory, fair trial principle, *ne bis in idem* principle, *una via* principle, Universal Declaration of Human Rights 1948, International Covenant on Civil and Political Rights, and UUD NRI 1945. Furthermore, the research objects that will be examined are Law Number 7 of 2017 on General Elections and Government Regulations Number 11 of 2017 on Civil Servant Management.

IV. Result and Discussion

1. Fair Trial and Human Rights: An Overview

The terminology of a fair trial is not found in international or national law texts. It is a term formed by legal scientists to explain the important components needed to realize justice in the trial process. David Harris, in 1967, defined fair trial as a term to reflect the principles contained within UDHR, The American Declaration of the Rights and Duties of Man, International Covenant on Civil and Political Rights (ICCPR), European Convention on Human Rights, Inter-American Draft Convention on Human Rights, The Nuremberg and Tokyo Tribunals, The NATO Status of Forces Agreement, and Draft Conventions on State Responsibility.

In his elucidation, several indicators of fair trial are explained, namely, the rights of the accused in the conduct of his defense and miscellaneous rules. The initial one includes the right to be informed of the charge against him, the right to have adequate time and facilities to prepare a defense, the right to legal assistance, the right of cross-examination, the right to obtain the attendance of and to examine witnesses on behalf of the defense, the right to be an interpreter, and freedom from self-incrimination. Meantime, the latter comprises the presumption of innocence, the presence of the accused at his trial, special rules of procedure for cases involving juveniles, the right of appeal, compensation for wrongful conviction, freedom from double jeopardy, and the residual meaning of fair trial.¹⁹

Notwithstanding that Harris compiled a principle of fair trial through a number of international legal instruments, the literature review in this article shall be limited to the exertion of legal instruments relevant to Indonesian law. Suppose that UDHR, which reflects on Law Number 39 of 1999 on Human Rights (Law No. 39/1999) and ICCPR, which was adopted in Indonesian law through Law Number 12 of 2005 on The Ratification of International Covenant on Civil and Political Rights (Law No. 12/2005).²⁰ In that, another international legal instrument irrelevant to Indonesian law, although these instruments may function as a comparison and be adopted within this article including the principles compiled by Harris.

Briefly, fair trial can normatively be discovered in Article 5 UDHR, which says, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." The text expresses that humanist law is a law that aims to rejuvenate human dignity, not condescending human dignity. Means that legal texts and court decisions should remedy the conditions of perpetrators who were originally evil to good or rehabilitate the conditions of victims as previously injured towards normal.²¹ Besides that, the terminology of fair trial is also emphasized in the Article 14 (7) ICCPR which states "No one shall be liable to be tried or punished again for an offense for which he/she has already been finally convicted or acquitted

¹⁷ Joshua D. Atkinson, "Qualitative Methods." In *Journey into Social Activism: Qualitative Approaches*, 65-98, (Fordham University Press, 2017).

¹⁸ Robert Adcock and David Collier, "Measurement Validity: A Shared Standard for Qualitative and Quantitative Research", *The American Political Science Review* 95, no. 3 (2001): 529-46, <http://www.jstor.org/stable/3118231>.

¹⁹ David Harris, "The Right to a Fair Trial in Criminal Proceedings as a Human Right", *The International and Comparative Law Quarterly* 16, no. 2 (1967): 352-378, <http://www.jstor.org/stable/757381>.

²⁰ Law Number 12 of 2005 on The Ratification of International Covenant on Civil and Political Rights, September 6, 2024, <https://peraturan.bpk.go.id/Details/40261/uu-no-12-tahun-2005>.

²¹ David Weissbrodt and Mattias Hallendorff, "Travaux Préparatoires of the Fair Trial Provisions--Articles 8 to 11--Of the Universal Declaration of Human Rights", *Human Rights Quarterly* 21, no. 4 (1999): 1061-96, <http://www.jstor.org/stable/762756>.

in accordance with the law and penal procedure of each country", the article express that no one individual shall be punished twice for the similar act. An interpretation of Human Rights Committee regarding Article 14 (7) has a certain view that "prohibits bringing a person, once convicted or acquitted of a certain offense, either before the same court again or before another tribunal again for the same offense". The Human Rights Committee likewise stressed with examples such as "someone acquitted by civilian court cannot be tried again for the same by a military or special tribunal". An interpretation also stated that "the guarantee applies to criminal offenses only and not to disciplinary measures that do not amount to a sanction for a criminal offense within the meaning of Article 14 of the Covenant".²²

Double jeopardy in criminal law is invariably associated with *ne bis in idem* principle, it means no one shall be tried twice for the same act.²³ This doctrine perchance is accepted as a general principle in national law whether civil law or common law system and even international law.²⁴ On headway, the reality of double jeopardy does not only reside in criminal law, yet, extends to involve other areas of law, for example administrative law, as one offense is tried through criminal law and administrative law.²⁵ The presence of double jeopardy entangling criminal law and administrative law is the rationale for the emergence of the principle of *una via* as a prolongation of *ne bis in idem*. This principle states that no one act can be tried cumulatively, even in two different courts.²⁶ Since the appearance of *una via* principle, the double jeopardy dialectic is not only synonymous with criminal law, yet, has also spread to administrative law.

Pros and cons have emerged among legal scientists, particularly regarding double jeopardy, which imposes cumulative sanctions on two different courts.²⁷ The debate revolves around the context of issues; there is an opinion that cumulative sanctions are double jeopardy because they target the same act. On the other side, there is a view that cumulative sanctions are not double jeopardy, as if the legal objects that are infringed are different.²⁸ Lodewijk Jakob Jan Rogier view each other that *una via* principle is paramount, and statutory provisions should be made to prevent the possible cumulation of penal and administrative sanctions. Analogous with Rogier, Kumaralingam Amirthalingam stated that the borderless among criminal law and administrative law renders a potential for abuse of the authority held by the administrative officials and law enforcement officers, to complete Amirthalingam, Widdershoven believes that in the situation where one should pick whether to use administrative sanctions or criminal sanctions take into consideration the level of infraction or crime.²⁹

In contrast to Rogier, Amirthalingam, and Widdershoven, Stanley Yeo has a view that the difference between criminal and administrative sanctions, thus, it is possible for one act to be tried by two different laws as the characteristics of violations are dissimilar. Yeo seems to affirm the opinion of the autonomous school, which believes that criminal law has regulations, principles, and functions of it is own, as well as in possession of a strong character that

²² Eva Brems, "Conflicting Human Rights: An Exploration in the Context of the Right to a Fair Trial in the European Convention for the Protection of Human Rights and Fundamental Freedoms", *Human Rights Quarterly* 27, no. 1 (2005): 294-326, <http://www.jstor.org/stable/20069786>.

²³ Pedro Caeiro, "Jurisdiction in Criminal Matters in the EU: Negative and Positive Conflicts, and Beyond", *Kritische Vierteljahresschrift Für Gesetzgebung Und Rechtswissenschaft (KritV)* 93, no. 4 (2010): 366-79, <http://www.jstor.org/stable/43203168>.

²⁴ Michele N. Morosin, "Double Jeopardy and International Law: Obstacles to Formulating a General Principle", *Nordic Journal of International Law* 64, no. 2 (1995): 261-274, <https://doi.org/10.1163/157181095X00553>.

²⁵ Lodewijk Rogier, Penal Sanctions, Administrative Sanctions and the 'Una Via' Principle (June 18, 1992). Available at SSRN: <http://dx.doi.org/10.2139/ssrn.1895462>.

²⁶ Siti Shalima Safitri, 2024, "Interrelasi Denda Administratif Dan Pidana Dalam Pelanggaran Hukum Lingkungan Hidup Pasca Perppu Cipta Kerja", *Jurnal Hukum Lingkungan Indonesia* 9 (2):279-304, <https://doi.org/10.38011/jhli.v9i2.590>.

²⁷ P. H. van Kempen, & J. Bemelmans, "EU protection of the substantive criminal law principles of guilt and *ne bis in idem* under the Charter of Fundamental Rights: Underdevelopment and overdevelopment in an incomplete criminal justice framework", *New Journal of European Criminal Law* 9, no. 2 (2018): 247-264, <https://doi.org/10.1177/2032284418778146>.

²⁸ Idir Peci, "Sounds of Silence: A Research Into the Relationship Between Administrative Supervision, Criminal Investigation and the Nemo-Tenetur Principle." PhD diss., Rijksuniversiteit Groningen, (2006).

²⁹ Nathalina Naibaho, et al, "Criministrative Law: Developments and Challenges in Indonesia." *Indonesia Law Review* 11, no. 1, (2021): 1-14, doi:10.15742/ilrev.v11n1.647.

distinguishes it from another field of law, specifically administrative law, for example, in respect to sanctions.³⁰

In the authors' view, even though Article 14 (7) refers to the text "*in accordance with the law and penal procedure of each country*" and the interpretation states "*the guarantee applies to criminal offenses only and not to disciplinary measures that do not amount to a sanction for a criminal offense within the meaning of Article 14 of the Covenant*", that does not mean focused on criminal law acts only, yet, as well as can apply to that have two violations simultaneously in national law, for instance breaking criminal law and administrative law, but preceded by criminal law. Accordingly, administrative sanctions should not be processed if the defendant has been processed through criminal law. Thus, punishing an act sentenced by criminal law through administrative law is a human rights violation, particularly over the right to a fair trial.

Subsequently, the authors believe that criminal law and administrative law have the same purpose, namely to pursue state interest as stated in the constitution. There is no obligation to apply both simultaneously due to differences in characteristics; consequently, in one act, it is sufficient to provide one legal instrument, either criminal law or administrative law. For authors, cumulative sanctions are double jeopardy which goes against *una via* principle. While consistent with the *una via* principle, this view departs from critical analysis as sentencing an individual twice for the same act, which purpose to burying human dignity, whereas Article 5 UDHR teaches the states to make laws aimed to remedying human dignity. In highly critical imagination, the author believes that cumulative sanctions shall lead to widespread human rights violations, not limited to the right to a fair trial, but can extend to violations of the right to economic. Seeing that administrative sanctions following criminal sanctions regularly result in an individual's dismissal, which destroys all of the individual's sources of income, which impact their family.³¹

To conclude this part, the author would like to emphasize as Indonesia fully adheres to international human rights law which reflects in Article 28D UUD NRI 1945, Law No. 39/1999, Law No. 12/2005, and Law Number 11 of 2005 on The Ratification of International Covenant on Economic, Social, and Cultural Rights (Law No. 11/2005)³² Only one principle, the principle of self-determination, is reserved by Indonesia from all international human rights law instruments.³³ Thereupon, Indonesian legislation shall comply with all of the principles within international human rights law by expunging double jeopardy from legislation.

2. Double Jeopardy in Indonesia: Neglecting Human Rights

Double jeopardy in the context of cumulative sanctions has been discussed in legal studies of sundry countries, generally, double jeopardy targets tax and environmental cases. For instance, Indonesia applies double jeopardy to taxpayers through cumulative sanctions in the form of criminal sanctions and administrative sanctions as stated in Article 39 (1) and Article 7 Law Number 28 of 2007 on Third Amendment to Law Number 6 of 1983 on General Provisions and Taxations Procedures (Law No. 29/2007).³⁴ In environmental cases, Indonesia adjusts double jeopardy to environmental offenders through cumulative sanctions utilizing criminal sanctions and administrative sanctions as written in Article 22 (32) and (36) Law Number 6 of 2023 on the Establishment of Government Regulations instead of Law Number 2 of 2022 on Job Making Become Law (Law No. 6/2023).³⁵

Apart from Indonesia, Belgium is also listed as a country experiencing double jeopardy

³⁰ Nathalina Naibaho, et al, 1-14.

³¹ Francesca Bignami And Carla Spivack, "Social and Economic Rights as Fundamental Rights", *The American Journal of Comparative Law* 62 (2014): 561-87, <http://www.jstor.org/stable/26425410>.

³² Law Number 11 of 2005 on The Ratification of International Covenant on Economic, Social, and Cultural Rights, September 7, 2024, <https://www.komnasham.go.id/files/1475231620-uu-no-11-tahun-2005-tentang-pengesahan-SPXTXO.pdf>.

³³ M. Yakub Aiyub Kadir, "Revisiting Self-Determination Conflicts In Indonesia: An International Law Perspective", *Indonesia Law Review* 5, no. 2, (2015): 123-139, DOI: 10.15742/ilrev.v5n2.116.

³⁴ Law Number 28 of 2007 on Third Amendment to Law Number 6 of 1983 on General Provisions and Taxations Procedures, September 8, 2024, <https://peraturan.bpk.go.id/Details/39916/uu-no-28-tahun-2007>.

³⁵ Law Number 6 of 2023 on the Establishment of Government Regulations in Lieu of Law Number 2 of 2022 on Job Making Become Law, September 8, 2024, <https://peraturan.bpk.go.id/Details/246523/uu-no-6-tahun-2023>.

dynamics, especially in tax cases. Before 2012, Belgium yet adhered to double jeopardy in its tax law regime, where the offender could be subjected to administrative sanctions in the form of payment of tax fines and criminal sanctions through criminal fines in cases of tax fraud/evasion. Nowadays, Belgium has applied *the una via principle to abolish double jeopardy in tax cases by significantly increasing the number of criminal fines on tax infractions* so that there are no more tax administrative sanctions.³⁶

As elucidated above, several studies have been conducted regarding double jeopardy. Nathalia Naibaho measures that double jeopardy in tax cases should be reduced as it is discordant to *una via* principle. She also claimed that penalties for tax offenders should be calculated based on the state losses resulting from the tax infraction so that one number of sentences can be elected for them, either criminal sanctions or administrative sanctions.³⁷ Parallel to Naibaho, Siti Shalima Safitri holds a certain view that in environmental cases, a sanction should be chosen to be analogous with *una via* principle. She emphasized that administrative sanctions can be utilized for cases where the loss is small, and criminal sanctions can be employed for cases where the loss is large.³⁸

The explanation above states that double jeopardy must be deleted as it is ineffective and not well-targeted; all of the considerations lie in the characteristics of the act and its losses. This perspective surprised the authors and forced them to criticize it since the authors have considerations that are extremely important and sacred in double jeopardy than two considerations previous, namely, human rights deliberations.

In the author's outlook, the discussion regarding double jeopardy was initially not aimed at protecting the country, but at protecting human dignity. *The ne bis in idem principle explicates that a person may not be punished more than once for the same act; the una via principle also elucidates that a person cannot receive cumulative sanctions for the same act. The mention of both is very clear, such as a person/human being, not the state.* Thus, the elimination of double jeopardy should be in accordance with human rights deliberations, because of eliminating double jeopardy build upon state losses and legal effectiveness is inappropriate as it is not philosophical.³⁹

Neglecting human rights in Indonesia's context of double jeopardy is extremely hazardous, seeing that in Indonesia, there are as yet legislations that contain double jeopardy and potentially violate human rights, namely Law No. 7/2017 and Government Regulations No. 11/2017. Articles 37 and 135 of Law No. 7/2017 define that election organizers can be fired for committing election crimes or other crimes. Articles 285 and 286 of Law No. 7/2017 clarify that political candidates may have their candidacy or inauguration canceled due to committing election crimes or other crimes.⁴⁰ Hereafter, Articles 247-252 of Government Regulations No. 11/2017 illustrate the dismissal of civil servants for committing a criminal act, whether it is an honorable or dishonorable dismissal.⁴¹

In the authors' view, the explanation thereover shows that Indonesian legislations still contain double jeopardy, and obviously, this fact reflects human rights infringement. This statement is based on a fair trial principle that requires a person to be tried once for one act, while Law No. 7/2017 and Government Regulations No. 11/2017, on the contrary, require the perpetrator to be tried twice through criminal sanctions and administrative sanctions, thus contradicting the fair trial principle. The author's judgment gets stronger when it is found that Law No. 7/2017 and Government Regulations No. 11/2017 do not provide measures to remedy human dignity, such as carrying out certain coaching for their condition. Thus, the authors

³⁶ "Una Via Prosecution of Tax and Increased Criminal Fines," Laga.be, March 9, 2015, <http://laga.be/newsroom/legal-news/una-via-prosecution-of-tax-and-increased-criminal-fines>, in Nathalina Naibaho, et al, 1-14.

³⁷ Nathalina Naibaho, et al, 1-14.

³⁸ Siti Shalima Safitri, 279-304.

³⁹ Jürgen Gerhards, Lukas Antoine, and Rasmus Ollroge, "State Sovereignty and the Protection of Human Rights. How Military Humanitarian Intervention Is Supported by Citizens Around the World", *International Journal of Sociology* 54, no. 3 (2024): 155-76, doi:10.1080/00207659.2024.2342642.

⁴⁰ Law Number 7 of 2017 on General Elections, September 8, 2024, <https://peraturan.bpk.go.id/Details/37644/uu-no-7-tahun-2017>.

⁴¹ Government Regulations Number 11 of 2017 on Civil Servant Management, September 8, 2024, <https://peraturan.bpk.go.id/Details/5831/pp-no-11-tahun-2017>.

contend that Law No. 7/2017 and Government Regulations No. 11/2017 are oriented towards subverting human rights, as if formers perpetrators are unavailable to change for the better in the future. Unfinished, the authors also believe that double jeopardy in Law No. 7/2017 and Government Regulations No. 11/2017 is a violation of economic rights, due to the dismissal of election organizers, dismissal of civil servants, and cancellation of political candidates automatically amputate their income and that of their families, means, cutting of access to adequate welfare.⁴² Analysis related to economic rights would be presented in the next section for comprehensive examination.

3. Towards Fair Trial in Indonesia: A Critical Analysis

Departing from the analysis atop, the existence of double jeopardy in Indonesia encourages the authors to prescript the elimination of double jeopardy in Indonesian legislation. The erasure molds to the obligation of Indonesia as a duty bearer to respect, fulfill, and protect human rights for all citizens, including ex-convicts. The term to respect refers to the state's obligation not to force citizens to exercise their rights, as it is an option. The word to fulfill leads to the state's obligation to be energetic so that all citizens obtain their rights; the shape of this activity is through the establishment of legislation. The ability to protect is directly related to the state's obligation to prevent rights violations and intervene in rights violations through legal mechanisms.⁴³ Briefly, in human rights studies, the states are the duty-bearers, and the individuals are the right-holders.⁴⁴ Although the scope of human rights studies is broad, the analysis in this section shall be restricted to the right to fair trial and economic rights.

In the authors' outlook, as double jeopardy is trespassing fair trial principle, the rules in Articles 37, 135, 285, and 286 Law No. 7/2017 and Articles 247-252 Government Regulations No. 11/2017 should be abolished. The premise is highly clear: double jeopardy aims to submerge human dignity, not remedy it, as if former prisoners no longer have human rights because they committed criminal acts. The authors are consistent with what Michele N. Morosin stated in his work, as quoted in the interpretation of fair trial by The United Nations Commissions on Human Rights (OHCHR), that the fair trial principle includes the prohibition on trying an individual more than once for the same act in one jurisdiction.⁴⁵ The opinion gets thicker when there is evidence that in the context of the dismissal of election organizers, there are two competent courts, namely the district court called Pengadilan Negeri (PN)⁴⁶ and the honorary council for election organizers called Dewan Kehormatan Penyelenggara Pemilu (DKPP). In contrast, in the context of canceling political candidates, two institutions punish, namely PN and the General Election Commission, which is called Komisi Pemilihan Umum (KPU). Lastly, the dismissal of civil servants also involves two entities, namely PN and civil service development officer, which is called Pejabat Pembina Kepegawaian (PPK).⁴⁷ According to this explanation, the authors are increasingly convinced that the double jeopardy in Law No. 7/2017 and Government Regulations No. 11/2017 is against the fair trial principle, violating human rights. To strengthen the argument, the authors state that in the doctrine of the modern legal state, the law protects humans, not the state. The state is just a fictional entity formed by a group of people who agreed to establish a

⁴² A. Bilgrami, "Economic Rights, The Very Idea", *The Indian Economic Journal* 71, no. 1, (2023): 30-55. <https://doi.org/10.1177/00194662221145279>.

⁴³ Sonia Boulos and MariaCaterina La Barbera, "Obstacles to and Opportunities for Protecting Human Rights at the City Level: The Case of Madrid City Council Human Rights Plan (2017-2019)", *The International Journal of Human Rights* 27, no. 4 (2022): 659-84, doi:10.1080/13642987.2022.2142213.

⁴⁴ Morten Broberg and Hans-Otto Sano, "Strengths and Weaknesses in a Human Rights-Based Approach to International Development—an Analysis of a Rights-Based Approach to Development Assistance Based on Practical Experiences", *The International Journal of Human Rights* 22, no. 5, (2017): 664-80, doi:10.1080/13642987.2017.1408591.

⁴⁵ Michele N. Morosin, 261-274.

⁴⁶ The Competence of District Court, September 8, 2024, <https://peraturan.bpk.go.id/Details/38793/uu-no-48-tahun-2009>.

⁴⁷ Edi Suherman, "Kewenangan Pejabat Pembina Kepegawaian dalam Pengisian Jabatan Pimpinan Tinggi Pratama di Daerah Menurut Undang-Undang Nomor 5 Tahun 2014 tentang Aparatur Sipil Negara", *Jurnal IUS Kajian Hukum dan Keadilan* 5, no. 2, (2017): 220-232, <https://doi.org/10.29303/ius.v5i2.467>.

constitution that protects society in accordance with the law.⁴⁸ Thus, legal excuses to protect the dignity of states or even the dignity of institutions are inappropriate, as the basic idea is weak. Withal, democratic countries should be oriented toward protecting human rights, as state protection reflects authoritarian states. In other words, democratic countries should have internationalism and cosmopolitanism as a consequence of democracy.⁴⁹

Lastly, in this part, the authors emphasize that double jeopardy in Law No. 7/2017 and Government Regulations No. 11/2017 is an infraction of economic rights, as double jeopardy causes political candidates, election organizers, and civil servants to lose income, so their families are affected. What is even more frightening is that all of this could hamper their children's educational, health, and economic welfare. Accordingly, the states are not only committing human rights violations against ex-prisoners but also against their families and children. The eradication of double jeopardy for political candidates, election organizers, and civil servants should be possible so that they can continue their economic rights by applying one punishment for one act. In addition, they have been held accountable for their acts under criminal sanctions, so administrative sanctions should be deleted and transformed into coaching. The author's outlook is strengthened by the fact that former corruption convicts can become political candidates again.⁵⁰ Hence, election organizers and civil servants who commit crimes should be available for re-employment. As Irman Gusman is protected under political rights, cases of election organizers and civil servants should be protected under economic rights.

V. Conclusion

The dialectic in the discussion led the authors to summarize a number of conclusions. The fair trial principle is a component of international human rights law that state parties, including Indonesia, should obey. This principle also contains the *ne bis in idem* principle and *una via* principle. The attendance of double jeopardy in Indonesia within Law No. 7/2017 and Government Regulations No. 11/2017 has neglected human rights, as it aims to scuttle human dignity, not remedy. To embody fair trial, Indonesia should eradicate the double jeopardy in Law No. 7/2017 and Government Regulations No. 11/2017, one punishment for one act is sufficient and the rest is a guidance.

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⁴⁸ William Reno, "Fictional States & Atomized Public Spheres: A Non-Western Approach to Fragility", *Daedalus* 146, no. 4 (2017): 139-51, <https://www.jstor.org/stable/48563909>.

⁴⁹ Marc F. Plattner, "Internationalism and Democracy", *Philosophy* 80, no. 314 (2005): 495-511, <http://www.jstor.org/stable/4619676>.

⁵⁰ Irman Gusman Elected as Local Representative Council of The Republic in Indonesia 2024-2029, September 8, 2024, https://s.mkri.id/public/content/persidangan/putusan/putusan_mkri_10763_1718021592.pdf.

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